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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,191	11/26/2001	Luke Robinson Magee	8796	8121

27752 7590 12/20/2002

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CINCINNATI, OH 45224

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/994,191

Applicant(s)

MAGEE ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 14 and 16 is/are rejected.
- 7) ☒ Claim(s) 2-13, 15 and 17-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1-20, drawn to an absorbent article, classified in class 604, subclass 387.
- II. Claim 21, drawn to a method for attaching an absorbent article to a wearer, classified in class 604, subclass 540.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the claimed method could be used to attach a conventional tape tab diaper to a wearer.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jeff Moore on December 9, 2002, a provisional election was made without traverse to prosecute the invention of an absorbent article, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office Action. Claim 21 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 14 and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Goulait (5,108,384).

Goulait teaches an absorbent article (20) having a first waist region, a second waist region and a crotch region inter connecting the first waist region and second waist region, an article inner surface (26) and an article outer surface (30), the absorbent article (20) comprising:

a topsheet (26);

a backsheet (30);

a fastening device (24) for joining at least a portion of said first waist region with at least a portion of said second waist region, the fastening device (24) including at least one first fastening member (60), and at least one second fastening member (66);

the first fastening member (60) is joined to the first waist region, the first fastening member includes,

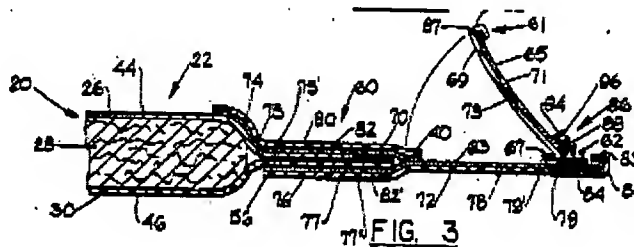
at least one first tab, the first tab including a first tab inner surface, a first tab outer surface (79), and a first tab (78) fastening element (63) on the first tab (78) inner surface (63),

at least one second tab, the second tab including a second tab inner surface, a second tab outer surface, and a second tab fastening element on the second tab inner surface,

a releasable tag to tag bond between the first tab outer surface (72) and second tab inner surface (71), the releasable tab to tab bond having a release load,

at least on second fastening member (66) joined to second waist region on the article outer surface (30);

each first tab fastening element and second tab fastening element are configured to provide an operably secure, fastening engagement with the second fastening member (66)(see Fig. 6, below).



### *Allowable Subject Matter*

Claims 2-13, 15, 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The claim(s) are considered definite because the examiner cannot show by clear and convincing evidence that one of ordinary skill in the art upon consulting the specification would not be able to determine the scope of the claim(s). See in general; W.L. Gore & Associates 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. Denied, 496 U.S. 851 (1984).

The claim(s) are considered patentable over the prior art of record as the examiner cannot show by clear and convincing evidence that the functional or characteristic limitation claimed

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necessarily flows and/or is inevitably present in the teachings of the prior art of record. There are other attributes undisclosed in the prior art that necessarily affect the functional or characteristic claimed; therefore, the application of prior art is not warranted. See *Ex parte Latimore*, (Bd. Pat. App. & Inter. 3/21/1994), *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached Monday-Friday.

In the event the examiner is not available, the examiner's supervisor, Weilun Lo may be reached at phone number (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.

  
Michael Bogart  
December 16, 2002

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700